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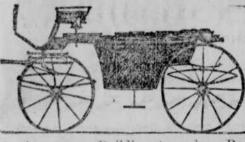
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OUR HIGHEST COURT.

OPINIONS HANDED DOWN AT WYTHEVILLE ON THURSDAY.

Squitable Assignment-Partition of Lands-Fraudulgut Assignment-No Case-Exceptions to Report-Pleading-Custom or Usage.

Following are abstracts of opinions banded down in the Supreme Court of Appeals on Thursday last:

Hicks, trustee, vs. Roanoke Brick Company, etc. Reversed. Opinion by Riely, J.

to one of the appellees being in excess of \$500, the court has jurisdiction as to all of the appellees, though the amount decreed to each of them be less than \$500.

2. Appellant failing to perfect appeal, operates as an affirmance of the decree in the lower court. Barksdale & Terry vs. Fitzgerald, 76 Va., 8:3; Cobb's As-

ginia Code, section 3475. 3. A mere promise to pay a debt out of a designated fund, when received, does not give an equitable lien upon it, or operate as an equitable assignment. To so that the person owing the debt or holding the fund can safely pay an order on it, and is compellable to do so, though forbidden by the drawer. Clay-Administrator, 2 ton vs. Fawcett's Administrator, 2 Leigh, 19; Eib vs. Martin, 5 lb., 132; Christmas vs. Russell, 14 Wall., 69; Trist vs. Child, 21 lb., 44. 4. The petitioners who obtained judg-

ments and issued executions thereon acquired a lien on the fund prior to the lien of appellants, continuing so long as the judgments could be enforced, though not enforceable until the money was payable. Code, section 3601-2, Charron & Co. vs. Bosweil, &c., 18 Gratt., 216; Trevillian's Ex'ors vs. Guerrant's Ex'ors, 31

5. Mechanics' lien laws do not apply to b. Mechanics lien laws do not apply to public works by States, cities, and coun-ties for public uses, unless the statute creating the lien expressly so provides. Supervisors vs. Parks, &c., decided at the

PARTITION OF LANDS. Brooks, &c., vs/ Hubble, &c., and Peery vs. Brooks, &c. Remanded for further inquiry. Opinion by Riely, J. Held: Until the Code of 1887 was enact-

Held: Until the Code of 1887 was enacted, coparceners could make partition of lands by parol as well as by deed. Yet, where oral partition is relied on as defence to a bill filed by one of the parceners or his heirs for partition of a certain tract, the burden of proof is on those setting it up to show clearly that such partition was made; and it is not sufficient to show clearly the fact that it sufficient to show simply the fact that it was made, but the burden is not lifted until it is shown to whom the several lots were assigned. Until this is done there is only a partial and ineffectual compliance with the obligation arising from the burden of proof, and the defence cannot avail at least where one of the coparavail, at least where one of the copar-ceners was a married woman, and is bound by the partition only through the act of her husband.

FRAUDULENT ASSIGNMENTS. Spence vs. Repass, etc. Affirmed. Opin-

Spence vs. Repass, etc. Animaed. Opinlon by Harrison, J.

The main principles enunciated in this
case—business transactions between husband and wife—that the burden of clear
and satisfactory proof by the wife of
bona fides is essential, were fully discussed in cases reported last week. It
was further held—

Obsection to competency of a wit-Objection to competency of a wit-

ness (when known) must be made, before the examination in chief; at least, it cannot be made after cross-examination, Pillow vs. Southwest Improvement Com-

pany, 92 Va. 144. pany, 52 Va. 144.

2. To warrant a court in subjecting betterments put on the wife's land by husband to payment of his debts, it must be clearly shown that they were put there with her assent and approval, put there with her assent and approval of Bristol got an injunction restraining him from the free and rightful was a few and rightful was and with intent on her part to defraud his creditors. Second Bishop on Married Women, sections 200, 454, 467, 472. 2. The lien of a fl. fa. not levied on property capable of being levied on ceases after the return day of the writ. Caste, section 2557.

Code, section 3587. NO CASE.

Williams, &c., vs. Reynolds, &c. Af-Williams, &c., vs. Reynolms, &c. Ar-firmed. Opinion by Harrison, J. Appellants filed petition in a pending case, alleging purchase of lots at judi-cial sale, payment therefor, confirmation of sale, decree for deeds by commis-sioner, and report by commissioner that he had made deeds confirmed; that, in fact, deeds had been made without legal authority, and in fraud of petitioners' rights to other parties than themselves. Proof that deeds were, in fact, made to vendees of petitioners at petitioners' request. Decree for appellees affirmed, EXCEPTIONS TO REPORT.

Jones, &c., vs. Byrne's Administrator, &c. Reversed in part. Opinion by Cardwell, J.; Buchanan, J., dissenting. Held: An exception to a commissioner's report, which brings to the attention of report, which brings to the attention of the Court facts appearing of record in the office of its Clerk, which the Com-missioner had failed to report, which facts are very essential to a proper adju-nication of the case, involves the recom-mittal of the report, in order that inquiry

mittal of the report, in order that inquiry and report be made as to the alleged facts set out in such exception.

Buchanan, J.: The exception is not supported by any evidence in the record, by affidavit or otherwise. In the absence of any proof of the existence of appellants' claim, or of diligence on their part, the Court could not do otherwise than overrule the exception, and especially when no motion was made to recommit.

PAROL SALES OF LAND. Helton, &c., vs. Johnson, &c. Affirmed. Opinion by Cardwell, J.

Appellants allege parol contracts with Johnson, Sr., their father-in-iaw and father, respectively, to convey certain father, respectively, to convey certain lands. He afterwards conveyed by deel these lands to his son, P. L. Johnson, in consideration of natural love and affection and \$300 in cash. Allegation of fraud in the procurement of the deed, and prayer that it be set aside. No proof of fraud, and evidence to sustain the paral contracts were for a sustain the paral contracts. the parol contracts very far short of that required to warrant enforcement of parol contract for sale of land.

Held: The grounds on which parol agreements for the sale of land are enforced are as follows: First, the agreement must be certain and definite in its terms; second, the acts proved in part performance must refer to, result from, and be made in pursuance of the agreement made; third, the agreement must have been so far executed that a refusal to full execution would operate a fraud upon the parties and place them in a situation which does not lie in compensation. Wright vs. Puckett, 22 Gratt., \$74.

PLEADING. the parol contracts very far short of PLEADING.

Smith vs. Packard, trustee. Affirmed. Opinion by Cardwell, J.

The appellee did certain work for the appellant. When finished the work was accepted, and the use of it was continued accepted, and the use of it was continued till action was brought—assumpsit for amount due under the contract and extra work done, the declaration containing the common counts and three special counts. Demurrer overruled, plea of general issue, payment with account, set-off with account, and special plea in nature of set off. Verdiet for plaintiff set aside. Another verdict for plaintiff and new trial denied. Errors assigned, refused to set aside verdict as contrary to law and evidence, misdirection of jury, refusal to set aside verdict as not responsive to the issues submitted.

Held: 1. In an action on a special con-

pleted and accepted, counsel should not rely only on a special count founded on the contract as made, but should also insert a general count for the price of the work done. Failing to prove the contract as alleged, or to show that the work was done as the contract required, he may still recover, upon the general count, the value of the work done and accepted. 4 Minor's Inst. 622

Value of the work done and accepted.

4 Minor's Inst., 622.

The instructions given by the court correctly propounded the law as stated.

2. The verdict was substantially responsive to all the issues submitted. It was free from confusion, there was no difficulty in entering judgment upon it. and under the pleadings it was unobjectionable. 2 Barton Pr., 692-3.

CUSTOM OR USAGE.

CUSTOM OR USAGE. Hansbrough, executor, vs. Neal, Featherston & Co. Reversed. Opinion by Buchanan, J.
Action by Neal, Featherston & Co. to

recover commissions for selling land. Verdict for plaintiff, and writ of error. Held: The amount in controversy as First error assigned, permitting intro duction of evidence to prove a custom or usage in Roanoke, where the transaction occurred, as to rate of com-missions on such sales, and as to time tract. There was no written contract signee vs. Glichrist, 80 Va., 568. Viris evidence that Gish, the husband, had authorized plaintiffs to make sale of his land, and when they found purchasers, that he paid an attorney to write the agreement of sale, which was signed by the parties, and that Gish and wife tendered a conveyance to the purchasers.

Held: 1. Where there is an express agreement, silent or ambiguous, as to the compensation for the work to be done, or where there is no express agreement at all, porol evidence is admissible to show a certain custom or usage of the business and of the locality. known to the parties, or so general and well settled as to raise the presumption that the parties dealt with a silent reference to the usage and tacit under-standing that their rights and responsibilities should be determined by it. Richards, etc., vs. Hiltlebeitel, 92 Va., 91, and cases cited.

> alleged in the pleadings, otherwise evidence of the same is inadmissible (Jackson's Administrator vs. Henderson, 3 Leigh (m. p.) 196; Governor, &c., Withers, 5 Gratt., 24), where there an express agreement in writing. But where there is an implied contract only and the action to recover what the ser-vices are reasonably worth, there seems services are fixed, may not be set up in the pleadings, since the recovery ought to be what is usual and customary for like services, whether their value be fixed by the general law or a local

Whilst the rule is that the party who relies upon such usage must show that it is established, uniform, general, and notorious in the locality, it is a ques-tion of fact for the jury, under the instructions of the Court, whenever there is any evidence tending to prove it, althe evidence be conflicting or the witnesses differ as to its extent and

2. The first instruction for plaintiff was erroneous, because it directed the jury to find for the plaintiffs and fix their damages at 5 per cent, on the pur-chase price. There was no evidence that the defendant's testator (Gish) had bein selling his wife's interest in the land. If plaintiffs sold the land for Gish and wife, they had the right to compensation, but in the absence of agreement by husband to pay for selling his wife's

Ayer's Administrator vs. Norfolk and Western Railroad Company. Affirmed.

Opinion by Buchanan, J. There is nothing in this case to take it out of the general rule as to contribu-tory negligence, and the judgment is affirmed.

STATUTE OF LIMITATIONS.

of Bristol got an injunction restraining him from the free and rightful use of the waters of the creek, which remained operative till July 13, 183, when the Court of Appeals vacated and annulled it, but its decree awarded him no damages, nor made any provision for their recovery. He brought an action in the case for damages are afforders pleaded not guilty and ages, defendant pieaded not guilty, and the Statute of Limitations, which latter plea presents the sole question to be con-sidered. Section 2:27 of the Code provides a limitation of five years in every personal action for which no limitation is otherwise prescribed. If the right of action survive for or against the personal representative, five years; otherwise, one year next after the right to action accrued. Mumpower contends that the action is of the former class, citing section 2655—"An action of trespass, or trespass on the case, may be maintained by a personal representative for the taking or carrying away of any goods, or for the waste or destruction of, or damage to

waste or destruction of, or damage toy any estate of or by his decedent."

Held: The wrongful act complained of consisted in maliciously, and without probable cause sulng out an injunction, whereby the operation of the mill was suspended. It is quite obvious that the injunction did not operate to take or carry away plaintiff's goods, nor cause the waste or desiruction of or indict any the waste or destruction of, or inflict any damages upon, the estate of the plain-tiff. The damage must be direct, and not the consequential injury or loss to the estate which flows from a wrongful act directly affecting the person only. No part of his property was taken or carried away; the use of the property-not the property itself-was affected by

the act of which he complains.

Such a right of action does not survive, and is barred by the limitation of one yest.

A Word in Senson.

A Word in Senson.

(Atlanta Constitution.)

The Constitution would address a few words to the Georgia Har Association, which meets to-day at Warm Springs.

The gentlemen of the association cannot fail to have noticed the widespread dissatisfaction which exists in regard to court procedure in this State. The people have observed that the time of the court is frittered away in attention to legal technicalities, and that it seems impossible to get at the meat of a cause because of the outlying trivialties which may stand in the way. They have doubtless observed how difficult it is to bring a murderer to justice; how interminable motions for continuances, for investigations into sanity, for changes of venue and other excuses and delays, keep off the trial of the main cause until even the witnesses are dead or the facts are forgotten, and then, when a belated trial is reached, it is again followed by attacks on the jury, by motions for new trials, by appeals to the Supreme Court, and by a new play upon the sanity dodge. It must be admitted that all of this is very annoying to the people, very expensive to the State, and subversive of that good opinion upon which true patriotism is built.

The people want a change from all this,

to the State, and subverse of that good opinion upon which true patriotism is built.

The people want a change from all this. They want the courts to be established more as tribunals of trial than as forums of debate—more as places where criminals are brought up with a short jerk than as seenes for the exercise of technical practice upon a tired judge. It is not doing the lawyers of Georgia too great an honor to say that the people hold them largely responsible for the laws which exist.

These being the plain facts of the situation, the gentlemen to day assembled in Warm Springs might as well understand the responsibility which rests upon them of securing those amendments which will make court procedure satisfactory to the people. It will not be sufficient for two or three members of the association to deliver desultory speeches of regret at the situation. The people expect them to take more formal and definite action—to act, in other words, as if the responsibility of legislation rested immediately upon them, and so formulate plans for presentation to the next Legislature, behind which they are willings to stand both collectively and individually. They have it in their power, fust as certain as they meet to-day, if they make the right use of their opportunity to eweep out the

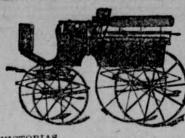
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(ja 24-Su.Tu&Th6m)

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EASTERN DISTRICT OF VIRGINIA:

Whereas, on the 22d day of June, 1897,
James Fetterly filed his libel in the District Court of the United States for the
East District of Virginia, against the tug
Heary Christian, her boats, tackle, apparel, and furniture, in a cause of collision, civil and maritime;
And whereas, by virtue of process in
due form of law, to me directed, returnable on the 29th day of June, 1897, I have
setzed and taken the said steamtug Henry
Christian, and have her in my custody.
Notice in hereby given that a District
Court will be held in the United States
court-room, in the city of Richmond, on
the 5TH DAY OF JULY, 1897, for the
trial of said premises, and the owner, or
owners, and all persons who may have
or claim any interest, are hereby cited
to be and appear at the time and place
aforesaid, to show cause, if any they
have, why a final decree should not pass
as prayed.

United States Marshal,
By Thomas H. Cross, Deputy Marshal,
je 25-t Jy 9 in



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land. Pullman ears from New York and Washington. Daily. Stops at Widewater, Brooke. Fredericksburg, Summit, Gulnea, Woodslane, Milford, Penola, Ruther Glen, Doswell. Ashland, Glen Allen, and Elba. Sleep-ing-cer.

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General Offices: Roanoke, Va. je 2



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STREET STATION.

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3:35 P. M., Daily, with Pullman, for local stations, Newport News, Old Point, Norfolk, and Portsmouth, Connects daily with Old Dominion steamship for New York.

10:20 A. M., Local train, with parlor-car, except Sunday, for W. Clifton Forge, Connects at Gordonsville for Orange, Culpeper, Calverton, Manassas, Alexandria, and Washington; at Union Station, Charlottesville, for Lynchburg; at Basic for Hagerstown.

2:15 P. M., Daily with Pullmans to Cin-

Station, Charlottesville, for Lynchburg; at Basic for Hagerstown.

2:15 P. M., Daily, with Pullmans to Cincinnatt, Louisville, and St. Louis. Stops only at important stations. Connects at Covington daily for Virginia Hot Springs. Meals served on Dising-cars. No. 7, Local Train, except Sunday, follows above train from Gordonsville to Goshen.

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10:15 A. M., Dally, from Norfolk and Old Point.

3:30 P. M. Dally, from Cincinnati and Louisville.

6:50 P. M., Dally, from Norfolk and Old Point.

7:30 P. M., Except Sunday, from W. Clifton Forge.

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ight received daily until 5 P. M.

Schedule in Effect May 18, 1897.

1:05 A. M., Daily. Norfolk, Sand.
Petersburg.
5:50 P. M., Daily. Jacksonville, Savadnah, Charleston, Wilmington, Goldsboro, and all
points South.
7:00 P. M., Daily. Norfolk, Suffolk, Waverly, and Petersburg, Lynchburg, and the West.
9:40 A. M., Sunday accommodation.
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7:25 P. M., Sunday accommodation.
T. M. EMERSON.
Traffic Manager.

J. R. KENLY, Traffic Manager, General Manager, C.S. CAMPBELL, je 3 Division Passenger Agent. SOUTHERN Schedule in Effect May 26, 1897.

TRAINS LEAVE RICHMOND, VA. 2:00 A. M., No. II, Southern Express,
daily for Atlanta, Augusta, and
points South. Sleepers Richmond
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and Charlotte, Sleeper open at 9:30
P. M.

Charlotte, N. C. Connects at Mose-ley with Farmville and Powhatan rathond. At Keysville for Clarks

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6:00 A. M. From Atlanta, Augusta, Asheville, and Nashville.

8:40 A. M. From Keysville.
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2:30 P. M., No. 10, LOCAL EXPRESS, Mondays, Wednesdays, and Fridaya, for West Point and intermediate stations. Connects with stage at Lesser Manor for Walkerton and Tappahannock: also, at West Point with steamers for Baltimore. Stops at all stations, daily, except Sunday, at fool of Virginia street, for West Point and intermediate stations, connecting with stage at Lester Manor for Walkertons, connecting with stage at Lester Manor for Walkertons, connecting with stage at Lester Manor for Walkerton and Taupahannock.

TRAINS ARRIVE AT RICHMOND.

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10:40 A. M., Mondays, Wednesdays, and Fridays.

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Sieamers leave West Point at 6:00 P. M. Mondays. Wednesdays, and Fridays, and Haltimore at 5:00 P. M., Tuesdays, and Haltimore at 5:00 P. M., Tuesdays, and Faturdays, and Faturdays, Ticket office at station, foot of Virginia street, Open from 9.20 P. M., to 2 A. M.

City ticket office, 903 cast Main street.

J. M. CULP. W. A. TURK, Traffic Manager, General Pass. Agt.

W. H. GREEN, General Superintendent, Washington, D. C.

C. W. WESTBURY, Travelling Passenger Agent, 220 cast Main street, Richmond, Va.